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8 KJ-PARK, LLC,
9 Plaintiff,
10 v.
11 MATCH GROUP, LLC, et al.,
12 Defendants.
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Case No. [23-cv-02346-VKD](#)

**ORDER RE MARCH 13, 2024
DISCOVERY DISPUTE RE
PLAINTIFF'S DOCUMENT
REQUESTS**

Re: Dkt. No. 77

14 Plaintiff KJ-Park, LLC (“KJ-Park”), defendants Match Group, LLC and Match Group, Inc.
15 (collectively, “Match”), and non-party Jones Lange LaSalle Americas, Inc. (“JLL”) ask the Court
16 to resolve a dispute concerning KJ-Park’s efforts to obtain discovery of information relating to
17 Match leasing alternative space. Dkt. No. 77. The Court finds this dispute suitable for decision
18 without oral argument. *See* Civil L.R. 7-1(b).

19 For the reasons explained below, the Court sustains Match’s and JLL’s objections to KJ-
20 Park’s document requests.

21 **I. BACKGROUND**

22 In the operative complaint, KJ-Park claims that Match breached a lease agreement and a
23 guaranty concerning a building located at 2555 Park Boulevard in Palo Alto, California. *See* Dkt.
24 No. 72. Match denies KJ-Park’s claims and asserts several affirmative defenses, including the
25 affirmative defenses of “unliteral mistake” and “mutual mistake.” *See* Dkt. No. 76 at 6-7. JLL is
26 Match’s real estate broker. *See* Dkt. No. 77-1 at ECF 3; Dkt. No. 77-2 at ECF 3. The Court has
27 federal diversity jurisdiction, pursuant to 28 U.S.C. § 1332.

28 This discovery dispute concerns KJ-Park’s RFPs 24-27 and 33-35 to Match and RFPs 17-

1 19 by subpoena to JLL. Dkt. Nos. 77-1, 77-2, and 77-3. KJ-Park asks Match to produce:

2 1) “All communications” between Match and any other person regarding its “decision to
3 lease space in San Francisco instead of the [2555 Park Boulevard premises] in 2019”
4 (RFPs 24-27);
5 2) A copy of Match’s lease for 116 New Montgomery Street, Suite 700, in San Francisco
6 (RFP 33);
7 3) “All letters of intent” relating to Match’s “interest in any other commercial properties
8 to lease in 2019 other than the [2555 Park Boulevard premises]” (RFP 34); and
9 4) “Any marketing brochures or fliers” for other space Match was “interested in leasing in
10 2019 other than the [2555 Park Boulevard premises]” (RFP 35).

11 KJ-Park asks JLL to produce “all communications” with Match relating to the office space at 116
12 New Montgomery Street in San Francisco, Match’s decision to lease alternative space in San
13 Francisco in 2019, and the process for finding alternative space in San Francisco in 2019 (RFPs
14 17-19).

15 KJ-Park says that these document requests seek information relevant to its breach of
16 contract claims and to Match’s affirmative defenses of unilateral and mutual mistake. Dkt. No. 77
17 at 2-4. Match and JLL refuse to produce responsive documents responsive, asserting that these
18 requests seek to uncover Match’s subjective motivations for terminating the lease and are
19 therefore irrelevant. *Id.* at 7-9.

20 **II. LEGAL STANDARD**

21 A party may obtain discovery of any non-privileged matter that is relevant to a claim or
22 defense and that is “proportional to the needs of case, considering the importance of the issues at
23 stake in the action, the amount in controversy, the parties’ relative access to relevant information,
24 the parties’ resources, the importance of the discovery in resolving the issues, and whether the
25 burden or expense of the proposed discovery outweighs its likely benefit.” Fed. R. Civ. P.
26 26(b)(1). Information need not be admissible in evidence to be discoverable. *Id.*

27 Federal Rule of Civil Procedure 45 governs discovery of non-parties by subpoena. The
28 scope of discovery through a Rule 45 subpoena is the same as the scope of discovery permitted

1 under Rule 26(b). *Beaver Cnty. Employers Ret. Fund v. Tile Shop Holdings, Inc.*, No. 3:16-mc-
2 80062-JSC, 2016 WL 3162218, at *2 (N.D. Cal. June 7, 2016) (citing Fed. R. Civ. P. 45 advisory
3 comm. note to 1970 amendment); Fed. R. Civ. P. 34(a).

4 **III. DISCUSSION**

5 KJ-Park’s principal argument is that the documents it seeks are relevant to Match’s third
6 affirmative defense, asserting “unilateral mistake,” and fourth affirmative defense, asserting “mutual
7 mistake.” *See* Dkt. No. 2-3. In its answer, Match alleges that KJ-Park’s breach of contract claims “are
8 barred on the ground of [unilateral and/or mutual] mistake, because . . . Defendants were under the
9 mistaken impression when they entered into the Lease that Defendants could use the entirety of the
10 premises that were the subject of the Lease for offices.” Dkt. No. 76 at 6-7. Match further alleges
11 that it was unaware that “the City of Palo Alto took the position that the City’s Retail Preservation
12 Ordinance precluded Defendants from lawfully using the ground floor of the Premises for offices.
13 Not only did the Lease expressly state that the premises would be used entirely for offices, but the
14 Lease expressly prohibited the use of any portion of the premises for retail purposes.” *Id.* at 7.
15 Match also alleges that it would not have entered into the lease or the lease guarantee if it had
16 known it could not lawfully use the entire premises exclusively as office space. *Id.* at 6, 7. KJ-
17 Park argues that it is entitled to discover “information that contradicts Match’s assertion that it
18 made a mistake with regard to the parties’ Lease.” Dkt. No. 77 at 3.

19 Match and JLL respond that KJ-Park “fails to articulate how the . . . discovery has any
20 logical bearing whatsoever on whether either party was mistaken on any fact or law related to the
21 Retail Ordinance.” *Id.* at 8. They argue that whether Match discussed alternative spaces with JLL
22 or anyone else is irrelevant to KJ-Park’s breach of contract claims. *Id.* at 8-9.

23 In this action, the parties dispute whether KJ-Park fulfilled its contractual obligation to
24 deliver the premises in the required condition as of the date specified in the lease agreement, and
25 whether Match was permitted to terminate the lease and properly did so pursuant to the lease
26 terms. Match is correct that as a general matter its motive or intent in terminating the lease is not
27 relevant for purposes of liability or damages for breach of contract. *See Applied Equip. Corp. v.*
28 *Litton Saudi Arabia Ltd.*, 7 Cal. 4th 503, 516 (Cal. 1994) (“[T]he law generally does not

1 distinguish between good and bad motives for breaching a contract.”); *see also Alki Partners, LP*
2 *v. DB Fund Servs., LLC*, 4 Cal. App. 5th 574, 597 (Cal. Ct. App. 2016) (“A party’s purported
3 motive to breach a contract is not relevant to the issue of whether there has been a breach. If
4 failing to communicate with investors was not otherwise a breach of contract, there was no breach
5 even if [the contracting party’s] failure to communicate with investors stemmed from a bad
6 motive, greed, or other self-interest.”). However, Match has chosen to assert affirmative defenses
7 of unilateral or mutual mistake. The mistake in question is the belief (by Match and/or by both
8 parties) that no ordinance of the City of Palo Alto prevented use of the ground floor of the
9 premises as office space, and specifically that the City’s Retail Preservation Ordinance did not
10 require that the ground floor be used for retail purposes. Match contends that it would not have
11 entered into the lease or the guarantee but for this mistake.¹

12 The Court agrees with KJ-Park that it is entitled to discovery of the bases for Match’s
13 affirmative defenses of mistake, including the veracity of the allegations made in support of those
14 defenses. But the requests at issue do not seek communications reflecting Match’s awareness or
15 understanding of the City of Palo Alto’s retail ordinance or its applicability to the premises, and it
16 is not clear how Match’s efforts to lease alternative space in San Francisco in 2019 have any
17 bearing on whether either or both parties were mistaken about the retail ordinance at the time they
18 entered into the lease agreement or the guarantee.

19 KJ-Park’s other arguments are not persuasive. It argues that the document requests “relate
20 directly to the issue of whether [KJ-Park] performed under the Parties’ lease and whether Match
21 breached the contract by terminating and refusing to take possession of the Premises.” Dkt. No.
22 77 at 3. KJ-Park speculates that “[i]n its discussions regarding its decision to lease office space as
23 an alternative to the Premises, it is likely that Match and [its] brokers discussed the alleged defects
24 with the Premises while considering its other leasing options.” *Id.* at 4. While KJ-Park may be
25 entitled to discovery of Match’s communications regarding alleged defects in the premises, the
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27 ¹ Match does not state whether there was a mistake of fact, *see* Cal. Civ. Code § 1577, a mistake of
28 law, *see* Cal. Civ. Code § 1578, or both. *See Harris v. Rudin, Richman & Appel*, 95 Cal. App. 4th
1332, 1339 (Cal. Ct. App. 2002) (party may rescind a contract if consent was the result of a
mistake of fact or law).

1 requests at issue do not seek any such communications, but instead seek communications about a
2 different subject matter—Match’s efforts to lease alternative space in San Francisco.

3 Additionally, KJ-Park argues that the document requests seek information relevant to the
4 credibility of Match’s trial witnesses, on the theory that responsive documents may contain
5 information that “contradict[s] or cast[s] doubt on Match’s witnesses’ assertions that the Premises
6 was not delivered in the proper condition, or that the retail ordinance justified Match’s termination
7 of the lease,” and might reveal “efforts [Match] took to create pretextual grounds for terminating
8 the lease.” *Id.* To the extent KJ-Park seeks information showing Match’s bad motive or intent in
9 terminating the lease, this information is not relevant to its breach of contract claim. KJ-Park
10 suggests that it nevertheless should be permitted to obtain this discovery because it may reveal that
11 a witness was untruthful about the “real” reason for terminating the lease and may therefore lead
12 to the discovery of admissible evidence relating to the witness’s credibility. KJ-Park cites no
13 authority for the proposition that a party may obtain discovery of irrelevant subject matter solely
14 for the purposes of developing evidence relating to credibility. The case on which KJ-Park relies,
15 *United States v. Hankey*, 203 F.3d 1160 (9th Cir. 2000), concludes that evidence of a witness’s
16 bias and motivation to lie in support of a fellow gang member is admissible to impeach the
17 witness’s trial testimony. 203 F.3d at 1171. *Hankey* does not stand for the proposition that a party
18 may obtain discovery of otherwise irrelevant subject matter in the hopes of demonstrating that a
19 witness has been untruthful about that matter, or that such evidence of untruthfulness would be
20 admissible at trial; *Hankey* concerns the admissibility at trial of evidence of bias or coercion
21 bearing on a witness’s credibility. *See, e.g., United States v. Ray*, 731 F.2d 1361, 1364 (9th Cir.
22 1984) (distinguishing between bias and untruthfulness); *Rackley v. Anderson*, No. 04-cv-141-
23 BLG-RFC, 2006 WL 8435694, at *2 (D. Mont. June 26, 2006) (distinguishing between bias and
24 irrelevant subject matter having no bearing on witness credibility). KJ-Park’s document requests
25 are not directed to evidence of bias or coercion.

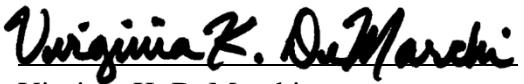
26 **IV. CONCLUSION**

27 Because KJ-Park has not shown that the documents it seeks are relevant to any claim or
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1 defense, the Court sustains Match's and JLL's objections on those grounds.

2 **IT IS SO ORDERED.**

3 Dated: April 17, 2024

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Virginia K. DeMarchi
United States Magistrate Judge